



Seventh Circuit Denies Reimbursement for Unilateral Placement Where Student is Progressing, Despite School's Procedural Errors

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In *M.B. v. Hamilton Southeastern Schools*, the Seventh Circuit rejected the parents' procedural and substantive claims because the procedural errors did not prevent the parents from participating in the IEP process or impact the student's IEP, and the student was making progress toward his IEP goals.

M.B. suffered a traumatic brain injury at the age of four, and his parents sought special education services from Hamilton Southeastern Schools. The parents contacted the school in early December 2007, but did not consent to an evaluation until late January 2008, after they received the report of the neuropsychologist they hired to evaluate M.B. The school convened a case conference meeting for M.B. at the end of April, where the committee found M.B. eligible for special education services and developed an IEP. The parents agreed with the IEP, which called for a half-day early childhood program and related services.

When the committee reconvened at the end of May to discuss M.B.'s progress and his services for the following year, the parents requested that the IEP provide for M.B. to attend both morning and afternoon sessions of kindergarten, consistent with the recommendations of their neuropsychologist. The school disagreed based on the progress M.B. was already making in the half-day program. The parents left the meeting before the IEP was complete. The parents then filed for a due process hearing and unilaterally placed M.B. in a private program.

The hearing officer, Indiana Board of Special Education Appeals, and district court all found in favor of the school and denied the parent's requested reimbursement.

The parents raised multiple procedural issues before the Seventh Circuit, all of which were denied. First, the parents claimed that the school had predetermined M.B.'s placement prior to the May meeting. But the court found no evidence of predetermination. The parents also faulted the school for failing to have a general education kindergarten teacher and someone who could authorize double-session kindergarten at the May meeting. But the court found that the lack of a kindergarten teacher was harmless because it did not affect the placement decision, and that the IDEA does not require the presence of someone who can authorize a proposed placement. Finally, the parents raised the school's failure to provide them with a prior written notice of the refusal to provide double-session kindergarten and failure to timely provide them with a copy of the IEP. The court, however, explained that the purpose of these requirements is to provide notice so that parents can challenge school decisions they disagree with. In this case, the parents knew the school was denying their request for double-session kindergarten and exercised their right to file a due process complaint.



The Seventh Circuit also dismissed the parents' substantive claim that M.B. was denied a FAPE because the IEP did not provide for double-session kindergarten. The school presented evidence that M.B. had already mastered some of his IEP goals and was progressing toward the others. Though the parent's neuropsychologist retested M.B. in July and found some regression, the court noted that the report was not available to the committee when they were developing the IEP in May and that it is "inappropriate to defer to the opinion of a single psychologist, particularly when that opinion is in conflict with the opinions of teachers and other professionals."

The parents also argued that the school violated its Child Find obligation. But Indiana law requires that a district evaluate a child within 60 instructional days of receiving parental consent, and the school met that requirement.

To be entitled to reimbursement for their unilateral private placement, the parents would have had to establish not only a denial of FAPE, but that the private placement they chose was appropriate. In addition to failing to establish a denial of FAPE, the parents failed to provide specific evidence that their chosen program was appropriate for M.B.

The decision takes a practical view; stressing that procedural violations only constitute a denial of FAPE if they result in a loss of educational opportunity, and recognizing that student progress is the primary indication of an appropriate IEP and thus FAPE.

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